

169-06 22nd Avenue
Whitestone, New York 11357

February 27, 2015

PPD read
3/11/2015
W.C.
United States Environmental Protection Agency
Region 2
Public Affairs Division
290 Broadway, 26th Floor
New York, New York 10007-1866
Attention: FOIA Officer

Note: This FOIA Request pertains to records that were created and/or that came under the purview of FOIA between November 5, 2013, inclusive, and February 27, 2015, inclusive.

Re: FREEDOM OF INFORMATION ACT REQUEST (ID: EPA_150227)
Including request for fee waiver

Dear FOIA Officer:

This is a Records Access Request (the "Request"), made pursuant to the Freedom of Information Act ("FOIA"), which is contained within Title 5 of the United States Code, Section 552.

Background:

The Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9605, grants citizens the right to petition the United States Environmental Protection Agency ("EPA") to conduct a preliminary assessment of potential hazards if the petitioners are "or may be, affected by a release or threatened release of a hazardous substance or pollutant or contaminate." 42 U.S.C. § 9605(d).

Any person who is, or may be, affected by a release or threatened release of a hazardous substance of pollutant or contaminate, may petition the President to conduct a preliminary assessment of the hazards to public health and the environment which are associated with such release or threatened release.

Id. The Code of Federal Regulations further stipulates that "[a]ny person may petition the lead federal agency to perform a PA (preliminary assessment) of a release when such person is, or may be, affected by a release of a hazardous substance, pollutant, or contaminant." 40 CFR § 300.420(b)(5). This petition must be directed to the EPA Regional Administrator covering the location of the site. *Id.* If the EPA has not previously conducted a preliminary assessment of such release, the EPA "**shall**, within 12 months after the receipt of any such petition, complete such assessment or provide an explanation of why the assessment is not appropriate." 42 U.S.C. § 9605(d) (emphasis added).

EPA must respond to such a petition. See Forest Guardians v. Babbitt, 174 F.3d 1178, 1187 (10th Cir. 1998) ("[W]hen a statute uses the word 'shall,' Congress has imposed a mandatory duty upon the subject of the command"). In addition, the Administrative Procedure Act requires EPA to respond: "Prompt notice shall be given of the denial in whole or in part of a written application, petition, or other request of an interested person made in connection with any agency proceeding." 5 U.S.C. § 555(e).

A preliminary assessment is the first step in the process of including an area on the National Priorities List, and guides EPA in determining which sites warrant further investigation to assess the nature and extent of the risk associated with a release of hazardous substances, pollutants or contaminants.

On information and belief, EPA has received communications from the public petitioning, requesting or otherwise inspiring EPA to conduct a preliminary assessment, pursuant to CERCLA Section 105, of, or encompassing, the area known as Willets Point, Queens. The term "Willets Point" as used herein refers to property located in Queens, New York that is bounded by, and includes, Northern Boulevard to the north; Roosevelt Avenue to the south; the Van Wyck Expressway to the east; and 126th Street to the west. Attached hereto is a map that depicts Willets Point.

On information and belief, persons who have sent above-described communications to EPA include, but may not be limited to, Dr. Jason Munshi-South, a professional biologist, who petitioned EPA during approximately April, 2013.

Records Presently Requested:

Pursuant to FOIA, I hereby request to receive duplicates of:

- (a.) All records that constitute communications from the public to EPA, that petition or otherwise request EPA to conduct a preliminary assessment of, or encompassing, Willets Point. This Request Item (a.) includes but is not limited to all letters and all attachments thereto. This Request Item (a.) includes but is not limited to all such communications from Dr. Jason Munshi-South to EPA.

And:

- (b.) All other records not described by paragraph (a.) above that constitute communications from the public to EPA, that pertain to Willets Point and were considered by EPA when determining whether or not to conduct a preliminary assessment of, or encompassing, Willets Point. This Request Item (b.) includes but is not limited to all letters and all attachments thereto. This Request Item (b.) includes but is not limited to all such communications from Dr. Jason Munshi-South to EPA.

And:

- (c.) All records that constitute communications from the public to EPA, that allege or suggest that Willets Point may be a "Superfund" site. This Request Item (c.) includes but is not limited to all letters and all attachments thereto. This Request Item (c.) includes but is not limited to all such communications from Dr. Jason Munshi-South to EPA.

And:

- (d.) All records that constitute follow-up communications, pertaining to any of the communications described within Request Items (a.) and/or (b.) and/or (c.) above, in either direction, between the public and EPA. This Request Item (d.) includes but is not limited to all letters and all attachments thereto sent by any representative(s) of EPA to the public that pertain to a prospective or actual preliminary assessment of, or encompassing, Willets Point; that provide an explanation of why a preliminary assessment is not appropriate; and/or convey the status or result of any such preliminary assessment. This Request Item (d.) includes but is not limited to all such communications between EPA and Dr. Jason Munshi-South.

And:

- (e.) All records that constitute the preliminary assessment prepared by EPA in connection with the petition requesting a preliminary assessment submitted by Dr. Jason Munshi-South to EPA during approximately April, 2013.

This entire Request pertains to records that were created, dated and/or otherwise came under the purview of FOIA between November 5, 2013 and February 27, 2015.

The term "record" as used within this Request has the identical meaning as the same term defined by FOIA, i.e.:

"'record' and any other term used in this section in reference to information includes - (A) any information that would be an agency record subject to the requirements of this section when maintained by an agency in any format, including an electronic format; and (B) any information described under subparagraph (A) that is maintained for an agency by an entity under Government contract, for the purposes of records management".

I reserve the right to request, at a later date, other records which are not described above.

If you find that this Request does not adequately describe the records sought, then I request to be so notified in writing, and to be provided an opportunity to confer with you in order to attempt to reformulate the Request in a manner that will enable you to identify the records sought.

Pursuant to 5 U.S.C. § 552(a)(3)(B), I hereby request that EPA provide the requested records in commonly-readable electronic form (e.g., Adobe Portable Document Format (PDF)) on CD-R disc.

I request to receive each record in its entirety, but if any complete record is not extant, then I request to receive any portion of each requested record that exists.

Time is of the essence in this matter. If some portions of the requested records are more readily available than others, then I request to receive any available portions at the earliest opportunity. Please do not delay making any portion of the requested records available because other portions of the requested records are not yet found, redacted or otherwise prepared for release.

If this Request is denied in whole or in part, I ask that you please specify the statutory exemption(s) claimed for each record or portion thereof to which access is denied. If you choose to withhold any record in its entirety, then please specify, in addition to the statutory exemption(s) claimed for each record or portion thereof, the date of and (if the record is a document) the number of pages in the entire record. Please advise me of any destruction of records relating to this Request, and include the date of and authority for such destruction. If any part of a requested record does not exist, then I request to be so notified in writing.

I request to receive the maximum possible amount of each responsive record's content, irrespective of the perceived significance of any particular content.

I am willing to pay costs for preparation of duplicate records in fulfillment of this Request, up to a maximum amount of \$50.00 USD. If you estimate that the fees will exceed this limit, then please inform me first so that I may consider how to proceed.

Notwithstanding the above-described willingness to pay duplication costs, I believe that this Request is eligible to be fulfilled without any charge or at a reduced charge, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii):

Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to

public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

I hereby certify that disclosure of the records to which this Request pertains is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. Accordingly, I hereby request that records that are responsive to this Request be furnished without any charge or at a reduced charge.

* * *

I request that all of your communications with me concerning this Request be in writing. Please address all correspondence to:

Robert LoScalzo
169-06 22nd Avenue
Whitestone, New York 11357

Thank you in advance for your anticipated cooperation and assistance.

Sincerely,

A handwritten signature in cursive script that reads "Robert LoScalzo".

Robert LoScalzo

1 enclosure

